

85-755

NO. _____

Supreme Court, U.S.

FILED

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JAMES E. KELLY, JR.

CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

DELYNDA ANN RICKER BARKER REED,

APPELLANT

v.

PRINCES ANN RICKER CAMPBELL, INDIVIDUALLY,

AND AS ADMINISTRATRIX OF THE ESTATE OF

PRINCE RUPERT RICKER, DECEASED,

APPELLEES

ON APPEAL FROM THE COURT OF APPEALS FOR THE
EIGHTH SUPREME JUDICIAL DISTRICT OF TEXAS

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

RETROACTIVITY QUESTIONS:

1. Should Delynda benefit from the holding of this Court in Trimble v. Gordon under the test of Chevron v. Huson?
2. Should Delynda be denied the benefit of the holding of this Court in Trimble v. Gordon under the "date-of-filing" test applied by the court below?
3. Should retroactivity of Trimble be determined by whether the claim was filed in an open estate or as a collateral attack on a closed estate?

LEGITIMATION QUESTION:

4. Does the Fourteenth Amendment require an opportunity for Delynda to legitimate herself equivalent to the statutory procedures arbitrarily denied her?

SEXUAL CLASSIFICATION QUESTIONS:

5. Where maternal heirship requires only a preponderance of the evidence, while paternal heirship is not allowed, is the distinction permissible?

6. Was the denial of Delynda's heirship from Prince Ricker justified in light of the jury's unchallenged finding of paternity and the convincing proof at trial?

* see list of parties below

* In addition to the parties listed in the caption, the following Appellees were also Appellees in the state action:

1. Rosemary Jane Ricker Farrell,
2. Prince Ricker, Jr.,
3. Bretta Drayton Ricker, and
4. Mark Ricker

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
LIST OF PARTIES (FOOTNOTE)ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIESiv
REFERENCE TO OPINIONS OF LOWER COURTS .	1
JURISDICTIONAL GROUNDS	2
CITATION OF CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	4
STATEMENT OF THE CASE	6
SUBSTANTIALITY OF THE QUESTIONS	13
RETROACTIVITY OF <u>TRIMBLE</u>	15
DENIAL OF LEGITIMATION	40
SEX-BASED CLASSIFICATION	49
NOTICE TO STATE ATTORNEY GENERAL . .	55
SIGNATURE	56
<u>APPENDICES:</u> REQUIRED MATERIALS . .	A
CONSTITUTION AND STATUTES . .	B
<u>TRIMBLE IN THE STATE COURTS</u> . .	C

III. LOWER COURT CASES

Allen v. Harvey, 568 S.W.2d 829 (Tenn. 1978), C.9, C.10, C.12, C.18-19

Andrade v. Jackson, 401 A.2d 990 (D.C. 1979), C.4

Compton v. White, 266 Ark. 648, 587 S.W.2d 829 (Ark. 1979), C.27, 20

Easley v. John Hancock Mutual Life, 403 Mich. 521, 271 N.W.2d 513 (Mich. 1978), C.3

Estate of Rudder, 78 Ill. App. 3d 517, 397 N.E.2d 556 (Ill. App. 1979), . . C.16

Estate of Sharp 163 N.J. Super. 148, 377 A.2d 730 (N.J. Ch. 1977) affirmed as modified, 394 A.2d 381 (N.J. App. 1978), 21, 33, C.8, C.9

Ford v. King, 268 Ark. 128, 594 S.W.2d 227 (Ark. 1980), 20, C.28

Frakes v. Hunt, 266 Ark. 171, 583 S.W.2d 497 (Ark. 1979), C.15, C.21

Herndon v. Herndon, 388 So.2d 463 (La. App. 1980), C.17

In re Estate of Burris, 361 So.2d 152 (Fla. 1978), C.4

Lovejoy v. Lillie, 569 S.W.2d 501 (Tex. Civ. App. -- Tyler 1978, writ ref'd, n.r.e.), C.6, C.15

Lucas v. Handcock, 266 Ark. 142, 583 S.W.2d 491 (Ark. 1979), C.20-C.21

Marshall v. Marshall 670 S.W.2d 213
(Tenn. 1984), 21, 22, 26, 27, 33, C.9-C.12, C.10

Murray v. Murray, 564 S.W.2d 5 (Ky. 1978),
. C.19, C.25

Nagle v. Wood, 178 Conn. 180, 423 A.2d
875 (Conn. 1979), C.3

Pendleton v. Pendleton, 560 S.W.2d 538
(Ky. 1977), 23, C.25

Pendleton v. Pendleton, 531 S.W.2d 507
(Ky. 1975), C.24-C.26

Reed v. Campbell, 682 S.W.2d 697 (Tex.
App. --El Paso 1984, writ ref'd,
n.r.e.), 20, A.1-A.15, C.26-C.27

Stewart v. Smith, 268 Ark. 766, 601 S.W.2d
837 (Ark. 1980), C.20

Succession of Clivins, 426 So. 2d 585
(La. 1983), 23, C.21

Succession of Trosclair, 423 So.2d 745
(La. App. 1982), 33, C.7

Wilson v. Jones, 281 S.C. 230, 314 S.E.2d
341 (S.C. 1984), C.16

Winn v. Lackey, 618 S.W. 910
(Tex.Civ.App.--Eastland 1981, no
writ), C.14-C.15, C.17, C.19

Wynn v. Wynn 587 S.W.2d 790 (Tex. Civ.
App.--Corpus Christi, 1979, no writ),
. 44, 47, 48

IV. STATUTES

Tex. Fam. Code §13.01,	B.5-B.6
Tex. Fam. Code §13.02 (Vernon Supp. 1975-1980)	B.7
Tex Fam. Code §13.08,	47
Tex. Prob. Code §37 (Vernon 1980),	28, 45, B.1-B.2,
Tex. Prob. Code §42, 43, 45, 46, 48, B.2-B.5, C.3
28 U.S.C. §1257(2),	3

REFERENCE TO ALL REPORTS OF OPINIONS
DELIVERED IN THE COURTS BELOW

The published opinion and denial of rehearing by the Court of Appeals, Eighth Supreme Judicial District of Texas (appendix A, infra) is reported as: Reed v. Campbell, 682 S.W.2d 697 (Tex.App.--El Paso, 1984, writ ref'd, n.r.e.).

The Texas Supreme Court's refusal of application for writ of error, noting "no reversible error", (appendix A, infra), is published in the advance sheets, 691 S.W.2d, No.2, p.8.

The following orders are unreported: order of the state district court denying Appellant heirship (appendix A, infra), orders of the Court of Appeals overruling Appellant's motion and amended motion for rehearing (appendix A, infra), and order

of the Texas Supreme Court overruling Appellant's amended motion for rehearing, (appendix A, infra).⁹

GROUNDS OF JURISDICTION

This direct appeal is taken from a state court judgment of the Texas Court of Appeals, Eighth Supreme Judicial District, denying heirship on the basis of illegitimacy. Delynda made a Motion for Judgment on the verdict based on the unconstitutionality of the statute. Judgment was entered for Appellees on December 19, 1984. Appellant's motion and amended motion for rehearing were denied on January 23, 1985. The Texas Supreme Court refused Appellant's application for writ of error on June 5, 1985. The Texas Supreme Court overruled Appellant's

amended motion for rehearing on July 17, 1985. At trial and throughout the appeals in the state courts, Appellant has attacked the statutes denying her heirship on the grounds that they violate the Fourteenth Amendment.

Notice of appeal was filed with the Clerk of the Texas Court of Appeals, Eighth Supreme Judicial District, on September 27, 1985.

This Court has jurisdiction of this appeal by virtue of 28 U.S.C. §1257(2). Past cases striking down similar statutes have come before the Court on appeal. The statutes provided relief from the bastardy rules of feudal common law, but arbitrarily excluded certain claimants. A few state courts have struck down the common law itself as unconstitutional. If the Court believes the appeal is improvident, the Court is requested to regard and

act on the papers of the appeal as on a petition for writ of certiorari duly presented at the time the appeal was taken, as provided by 28 U.S.C. §2103.

CITATION OF CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED

Appendix B, infra, sets forth:

- 1) the Equal Protection Clause of the Fourteenth Amendment;
- 2) TEX. PROB. CODE. §37 (Vernon, 1980);
- 3) TEX. PROB. CODE, Ch.55, §42, 1955 TEX. GEN. & SPEC. LAWS 88, 102, amended by Act of May 28, 1977, ch. 290, § 1, 1977 TEX. GEN & SPEC. LAWS, 762, 762-63;
- 4) TEX. PROB. CODE, Ch. 290, §1, 1977 TEX. GEN. & SPEC. LAWS, 762, 762-63, amended by Act of March 22, 1979, Ch. 24,

§ 25, 1979 TEX. GEN. & SPEC. LAWS 35, 40;

5) TEX. PROB. CODE §42 (Vernon 1980);

6) TEX. FAM. CODE, Ch. 476, §24, 1975
TEX. GEN & SPEC. LAWS 1261, 1261-62,
amended by Act of June 16, 1981, Ch. 674,
§2, 1981 TEX. GEN. & SPEC. LAWS 2536,
2537;

7) TEX. FAM. CODE, Ch. 674, §2, 1981
TEX. GEN. & SPEC. LAWS 2536, 2537 amended
by Act of June 19, 1983, Ch. 744, §1, 1985
TEX. GEN. & SPEC. LAWS 4530, 4530-31;

8) TEX. FAM. CODE ANN. §13.01 (Vernon
Supp. 1975-1985); and

9) TEX. FAM. CODE ANN. §13.02 (Vernon
Supp. 1975-1985).

STATEMENT OF THE CASE

Facts

Delynda Ann Ricker Barker Reed is the Appellant. Her natural father was Prince Ricker.¹ This case involves an appeal from an order denying Delynda heirship in Prince Ricker's estate. Appellees are the children of Prince Ricker's various valid marriages.

1. The evidence of Prince's paternity at trial was clear and convincing. Delynda's birth certificate listed Prince Ricker as her father. Delynda is a "perfect cross between her mother and Prince" in the opinion of Prince Ricker's sister, an opinion supported by comparison of pictures such as P.Ex. 2, 8-13, and 17. When he married Delynda's mother, Prince Ricker agreed that they would be husband and wife. After Prince Ricker's ceremonial marriage he moved his personal things into the house which Delynda's mother shared with her mother in Big Spring.

Delynda's parents were married at Thanksgiving, 1957, eleven months before Delynda was born. Their marriage was invalid because Delynda's father was not then divorced from his first wife. The divorce was pending when Delynda's parents

shared with her mother in Big Spring. Delynda's mother's maid testified that she was responsible for doing Prince Ricker's laundry after the wedding. The couple were listed together at that address in the city directory. Delynda's mother testified at the trial that she had sexual relations only with Prince Ricker from their wedding until after Delynda was born. Prince Ricker sometimes admitted only that he could have been Delynda's father. At other times throughout his life, he confided that he was the father. An alcoholic, he wrote in his AA work that he was the father, reasonably sure, of a child born out of wedlock. He explained to his sister that this meant Delynda, who was his as much as "Prinnie" or "Muggie" (two of the Appellees). He explained that this was one of his faults that he was sorriest for, that he had never done anything for Delynda. On this occasion, he echoed the testimony of Delynda's mother that "there

married. The decree of divorce from his first marriage was entered on February 28, 1958. Delynda was born eight months later, on November 1, 1958. Her birth certificate showed the name of her natural father, Prince Ricker, and stated that her birth was legitimate.

Delynda was adopted in 1966 by her mother's new husband, Gerry Barker. Delynda's natural father received the adoption papers and asked for advice concerning her adoption. Prince Ricker decided to "do it", based on his approval of Mr. Barker.

was no one else" who could have been the father. The evidentiary basis of the finding of paternity was not attacked by Appellees in any of the state courts.

Adoption in Texas severs all legal relationship between parent and child, except that the right of a legitimate child to inherit directly from its natural parent is not extinguished.

Delynda's natural father died on December 22, 1976, and Appellee was appointed administratrix of his estate the next day. The estate has since remained in open administration. Four months later, in April 1977, the opinion of this Court in Trimble v. Gordon, 430 U.S. 672 (1977), was handed down. Trimble removed any shadow of doubt that the Texas probate code, by posing an insurmountable barrier to heirship of illegitimate children, violated the guarantee of equal protection. The probate code was amended later in 1977, and again in 1979 to allow inheritance by legitimated children, but no opportunity was ever afforded for Delynda to be legitimated.

The questions presented in this Court were presented and ruled on by the courts below as set out below.

Delynda filed an application to determine her heirship in the ongoing administration of her natural father's estate. Appellees filed a motion for summary judgment that Delynda should not inherit because she had not been legitimated by a valid marriage of her parents or under the statutory procedures of the Family Code. They pointed out that Delynda's claim for legitimization under the family code was barred by limitations. Delynda responded that issues were raised as to whether she was her father's child, whether she was illegitimate, and whether suit to establish paternity had been filed in time. The court refused summary judgment and set the case down for trial.

At trial, the jury found that Delynda is the child of Prince Ricker, and that he had married Delynda's mother. Delynda made a motion for judgment on the finding of paternity, based on the invalidity of the statutory discrimination against illegitimate children under the Federal Constitution. Appellees moved for judgment on two grounds: (1) that Trimble v. Gordon had not been applied retroactively where the death was before Trimble was handed down and the claim for heirship was filed afterward; and (2) that Delynda could not inherit without being legitimated, and that limitations barred her legitimation. The trial court overruled Delynda's motion, and entered judgment for Appellees, without opinion.

Delynda perfected an appeal to the state Court of Appeals in El Paso. In every brief and motion for rehearing filed

in that court or in the Texas Supreme Court, she has raised the Fourteenth Amendment issues presented here: (1) that the rule applied in Trimble should be applied to the determination of her heirship where she applied to the open and pending estate; (2) that the legitimization requirement of the amended statute invalidly posed an insurmountable barrier in her case, and (3) that the denial of heirship discriminated invidiously based on the sex of her deceased parent.

The state court of appeals affirmed the denial of Delynda's heirship, with written opinion, and denied rehearing. Its rationale for applying the insuperable barrier was that Trimble had not been given retroactive effect where the father died before Trimble and the claim was filed after Trimble. It held that the insurmountable barrier in the amended sta-

tute was constitutional because supported by "a rational state basis". In doing so, however, it declined to hold that Delynda could have inherited even if she could have been legitimated. The court of appeals did not directly address the validity of the sexual basis of the statutory classification.

The Texas Supreme Court, without written opinion, refused to review the case on application for writ of error, noting "no reversible error", and denied rehearing.

SUBSTANTIALITY OF QUESTIONS PRESENTED

OVERVIEW

This section is divided into three parts. The first part addresses issues raised by the refusal to apply Trimble v.

Gordon retroactively. The second part sets out the substance of the denial of heirship through legitimation. The third part discusses the substance of the blanket denial of heirship based on the sex of the decedent.

The first two parts discuss issues which the Court has already deemed substantial and has decided. The third part discusses the similar state and individual interests involved in exclusions based on sex. The discussion of interests in the third part is generally applicable to parts one and two as well.

Each of the three parts begins by restating the relevant questions and then gives a list of reasons that justify the substantiality of the questions. A discussion justifying the reasons and addressing the issues completes each section.

PART I.

TRIMBLE QUESTIONS RESTATED

1. Should Delynda benefit from the holding of this Court in Trimble v. Gordon under the test of Chevron v. Huson?
2. Should Delynda be denied the benefit of the holding of this Court in Trimble v. Gordon under the "date-of-filing" test applied by the court below?
3. Should retroactivity of Trimble be determined by whether the claim was filed in an open estate or as a collateral attack on a closed estate?

SUBSTANTIALITY OF
THE RETROACTIVITY ISSUE

(1) The retroactive effect of a prior decision by this Court is at issue. The Court has already recognized the Equal Protection issues as substantial by deciding Trimble.

(2) The issue of retroactivity is sufficiently complex that the lower courts have taken irreconcilable positions, warranting plenary consideration.

(3) The retroactivity of Trimble invokes the supervisory duties of this Court over lower courts. Supervision is needed in order to insure that decisions of this Court are not circumvented through holdings of prospectivity unjustified under Chevron v. Huson, 404 U.S 97 (1971).

(4) There is a manifest need for guidance from this Court in distinguishing direct appeals and collateral attacks in applying Chevron.

SUMMARY OF TRIMBLE DISCUSSION

At least three cases would accord Delynda the benefit of the Court's ruling in Trimble v. Gordon, 430 U.S. 762 (1977). Three cases, including the decision below, would apply the unconstitutional statute to Delynda's case, Trimble notwithstanding. Many cases leave the applicability of Trimble in this case open to question.

The opinions that would apply Trimble are better reasoned. These decisions consider and weigh the factors set out by this Court in Chevron v. Huson, 404 U.S. 97 (1971). The Chevron test weighs the hardship of litigants who have relied on the old rule against the purpose of the new rule and the hardship of those deprived of the benefit of the new rule.

Some courts have addressed the role that closure of the estate plays in

causing reliance on the old statute. Often, no reliance was found where the claim was brought in an open estate. The equities have been held to favor application of Trimble in an open estate by courts which have applied the Chevron test. In Texas, the Probate Code itself guards against any significant hardship from reliance on the invalid statute. The Code's provisions relating to the pendency and finality of probate are well designed to minimize the chance of damage from justified reliance.

The purpose of Trimble was to set aside denials of inheritance rights which were not substantially related to order in probate. This interest is served by setting aside the statute where the death was before Trimble and the estate was open when the claim was brought.

For these reasons Trimble has, with the exceptions noted, been applied to claims brought in open estates, but denied in collateral attacks on closed estates. Delynda's appeal is from denial of an application for heirship she filed in the open and ongoing administration of her father's estate. Under the analysis this Court set down in Trimble and Chevron, an insurmountable judicial barrier to her heirship should not have replaced the statutory one. Such a barrier is not substantially related to order in probate.

DECISIONS OF THE LOWER COURTS ON THE ISSUE
OF RETROACTIVITY OF TRIMBLE USE DIFFERENT
REASONING TO REACH IRRECONCILABLE RESULTS.

This Court has treated Trimble as retroactive without specifically writing to the issue.² Decisions in the lower courts have adopted irreconcilable approaches. Three decisions, including the case at hand, have applied the invalid statute where the claim was brought in open probate.³ Three decisions have applied Trimble in an open estate in the exact chronological posture of the case at

2. Trimble v. Gordon and Lalli v. Lalli, briefed in Appendix C.1, infra. In addition to Lalli this Court vacated and remanded the case of Pendleton v. Pendleton, 421 U.S.911 (1977), to the Supreme Court of Kentucky where the Court held the claimant entitled to inherit on the authority of Trimble.

3. Reed v. Campbell, Compton v. White, Ford v. King, all briefed at appendix C.26 et seq., infra.

hand; first death, then Trimble, then the filing of the claim.

The other decisions conflicting on the retroactivity of Trimble lend themselves to being harmonized. Courts faced with a collateral attack seeking to reopen a closed estate have stated that Trimble would apply prospectively.⁴ These courts have often used broad language which failed to distinguish the situation of a direct attack. These statements were dicta to the extent that they might apply to open estates. Some of these courts have modified their holdings when pre-

4. Marshall v. Marshall, Estate of Sharp, and Gross v. Harris briefed infra at appendix C.5 et. seq.

5. These cases are briefed infra at appendix C.14 et. seq.

sented with a claim presented in an open estate.⁶

Similarly, courts deciding a claim raised in the ongoing administration of the open estate have applied Trimble to deaths which occurred prior to that decision, except for the three cases noted above, infra, p. 21, n. 3. The plurality of these cases have applied Trimble analysis without specifically addressing the retroactivity issue.⁷ Other decisions have applied Trimble by finding that the issue was in litigation before Trimble. These cases have in dicta indicated that

6. Marshall v. Marshall, (App. C. 9 et seq., infra, for example, abandoned the contrary dicta in an earlier decision to allow retroactive application in an open estate when the issue came before it.

7. These cases are briefed in the appendix at C.1 et seq., infra.

the invalid statutes would apply to claims not in litigation when Trimble came down.⁸

Louisiana applies equal protection in probate retroactively to the date of its new constitution effective at the end of 1974.⁹

One case involved retroactive application in a collateral attack. The Kentucky case of Pendleton v. Pendleton 431 U.S. 911 (1977), was vacated and remanded by this Court when it decided Trimble. On remand, the Kentucky Supreme Court apparently failed to appreciate the significance of the procedural difference between the cases. Pendleton v. Pendleton, 560 S.W.2d 538 (Ky. 1972). Trimble involved a claim in open probate.

8. These decisions are briefed in the appendix at C.17 et. seq., infra.

9. Succession of Clivins adopting the current Louisiana position, is briefed in the appendix infra at C.21 et. seq.

The court very reluctantly gave the illegitimate claimant the benefit of the Trimble ruling.¹⁰

Lower courts have failed to consistently apply the Chevron analysis. The departure of the lower court from the equal protection and retroactivity rules set out by this court highlights the need for plenary review in this cause.

* * *

THE TEST OF CHEVRON v. HUSON REQUIRES THAT TRIMBLE BE APPLIED RETROACTIVELY TO THE CASE AT HAND.

The three-element test for determining the retroactive application of civil decisions of this Court is set out in Chevron Oil Co. v. Huson, 404 U.S. 97 (1971).

10. Pendleton is briefed in the appendix, infra, at C.24 et. seq.

"In our cases dealing with the nonretroactivity question, we have generally considered three separate factors. First, the decision to be applied must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, * * * or by deciding an issue of first impression whose resolution was not clearly foreshadowed, * * *. Second, it has been stressed that "we must * * * weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operaton." * * * Finally, we have weighed the inequity imposed by retroactive application, for "[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity."

ANY HARDSHIP TO THE OTHER HEIRS FROM APPLYING TRIMBLE DOES NOT AFFIRMATIVELY OUTWEIGH THE HARDSHIP TO DELYNDIA OF DENYING HER HEIRSHIP UNDER THE DISCRIMINATORY STATUTE.

The case which has most carefully scrutinized the third element of Chevron is Marshall v. Marshall 670 S.W.2d 213, (Tenn. 1984). Marshall held that "prospective only" application of an overruling decision "should be limited to a case in which the hardship on a party who has relied on the old rule outweighs the hardship on the party denied the benefit of the new rule . . ." Id. at 215.

Chevron requires that the equities of those relying on the old rule must outweigh Delynda's equities so greatly that the balance outweighs the purpose of fairness which motivates Trimble.

Marshall found the reliance of passive heirs under a discriminatory statute to be absent.

The defendants in the instant case have not acted in reliance upon the precedent overruled by Allen, they merely assert that they have passively acquired rights as the heirs at law of an intestate property owner; they are not innocent purchasers for value of the property they seek to claim; and, neither do they assert the rights of those who claim under a valid court decree that has determined the identity of the heirs at law of an intestate property owner. Marshall v. Marshall, 670 S.W.2d 213, 215 (Tenn. 1984).

The Appellees in the present case, like those in Marshall, have not acted and should not have acted in such reliance on the invalid statue as to justify denying Delynda the right to inherit from her father.

The absence of hardship based on reasonable reliance is underscored by the Texas Probate Code chapters relied on by

Appellees. Where consistent with the Fourteenth Amendment, Chapter II controls Descent and Distribution in Texas. Chapter III, with the same reservation, controls the Determination of Heirship. Chapter II, specifically §37, safeguards against undue reliance on an opinion about heirship not finally determined by judgment. Section 37, set out in full in Appendix B, pp.1-2, infra, provides that the administrator shall hold the estate "in trust to be disposed of in accordance with the law". The manner required by law is determined by the probate court at the time that it enters a final judgment closing the probate of the estate. Persons choosing to deal with the estate, before heirship is finally determined, do so with notice that additional heirs may appear. The estate is held in trust for the benefit of all such heirs. In an open

estate, therefore, no reliance by third parties is justified or likely.

After a final judgment is entered, §55 of Article III provides protection for those reasonably relying on the judgment.

Under these circumstances, reliance on an expectation of heirship becomes rationally justifiable only when the estate is closed. Even before illegitimate children were declared to be "persons" within the meaning of the Fourteenth Amendment, inheritance expectancies were subject to the appearance of additional marital heirs.

It would be almost a Catch-22 ruling to hold that Delynda may inherit from her father notwithstanding the invalid statute, but will be denied heirship because of the passive mental expectancies of her

half brothers and sisters under the invalid statute.

The reality of Delynda's case is that there are seven heirs of Prince Ricker, and one, Delynda, has been held illegitimate. The monetary effect on Delynda of the denial of legal heirship is that she loses all of the share which she would otherwise receive. The effect on the other six heirs is that they divide among themselves the portion which the statute denies Delynda. With Delynda removed as the seventh heir, the share of each of the remaining six is increased from one-seventh to one-sixth of the estate. The greater practical impact on Delynda is clear.

THE PURPOSE OF TRIMBLE STRONGLY
FAVORS ITS APPLICATION IN THE OPEN AND
PENDING ESTATE OF DELYNDA'S FATHER

Trimble held invalid a classification based on illegitimacy because it cut more broadly than was required to serve the state's interest in order in probate. The purpose of Trimble is thus one that speaks with unusual eloquence to the issue of retroactivity. This court should not draw a retroactivity distinction which, if drawn by a statute, would be invalid under Trimble. The purpose of Trimble demands that equal access to protection of its rule be limited only by a classification substantially related to the need for order in probate.

Gross v. Harris, 664 F.2d 667 (8th Cir. 1981):

It is self-evident that the purpose of the Trimble decision was to prevent constitutionally impermissible discrimination against illegitimates. Retrospective application of Trimble would further the Trimble purpose.

The purpose of denying the retroactive effect of Trimble is not substantially related to refusal of a claim filed in open and pending probate. Retroactive application of Trimble will result in the estate's simply being closed by a judgment vesting title in seven heirs, rather than six. The judgment will enjoy the same protection from collateral attack if Delynda is included as an heir as it would otherwise. The distinct state interests of orderly probate, recognized by the Texas statutes as applying to closed estates, are not involved here. Finality of judgment is the event upon which the

state interest in orderly probate attaches. Succession of Trosclair 423 So.2d 745 (La.App. 1982), Estate of Sharp 163 N.J. Super. 148, 377 A.2d 730 (N.J. Ch. 1977) affirmed as modified, 394 A.2d 381 (N.J. App. 1978), Marshall v. Marshall 670 S.W.2d 213 (Tenn. 1984).

The classification proposed by the court below to disinherit Delynda is itself a violation of the Equal Protection Clause. Whether the claim of the illegitimate child was on file before the particular date in 1976 when Trimble was announced has no rational relevance to regular devolution of estates. No reason has been explained in any of the many cases applying this rule why it should matter when the claim was filed, or to whom. The date the claim was filed does not bear the substantial relation to issues such as whether the estate could

have been spent, sold, or mortgaged to a third party in good faith. Whatever its genesis, a rule focusing on the date of the claim was created and has been adhered to in dicta by a very large number of cases addressing the application of Trimble to deaths before its effective date.

TRIMBLE DID NOT PRESENT A CHANGE IN THE LAW SUFFICIENT TO JUSTIFY THE DENIAL OF RETROACTIVITY.

Trimble is sometimes viewed as impliedly overruling Labine v. Vincent, 401 U.S. 532 (1971). In fact, the Labine court sustained the Louisiana statute precisely because the child could have inherited in intestacy without a marriage of the parents. The Louisiana statutes, unlike those of other states, accorded an illegitimate child a right to alimony in

its father's estate. The Labine Court wrote:

We emphasize that this is not a case, like Levy, where the State has created an insurmountable barrier to this illegitimate child. There is not the slightest suggestion * * * that Louisiana has barred this illegitimate from inheriting from her father. Ezra Vincent * * * could have awarded his child the benefit of Louisiana's intestate succession statute on the same terms as legitimate children simply by stating in his acknowledgment of paternity his desire to legitimate the little girl. Id. at 539.

Reliance on the proposition that Labine did not mean what it said when it tied its decision to the availability of nonmarital legitimation was unwarranted. It became increasingly unwarranted as subsequent cases uniformly struck down statutes which posed insurmountable barriers.

Labine did not hold that state probate statutes were above constitutional review, though it was accused of doing so by the dissent. The dissent made that

charge because such a position would have been in clear conflict with the Supremacy Clause and the Fourteenth Amendment. In fact, however, Labine upheld the Louisiana statute in the absence of an insurmountable barrier.

The Trimble opinion was a scholarly decision which predictably applied the analysis developed in earlier cases, particularly Mathews v. Lucas, 427 U.S. 495 (June 1976). The majority in Mathews stated that

Appellees do not suggest, and we are unwilling to assume, that discrimination against children in appellees' class in state intestacy laws is constitutionally prohibited, see Labine v. Vincent, 401 U.S. 532, 91 S.Ct. 1017, 28 L.Ed.2d 288 (1971), in which case appellees would be made eligible for benefits under section 416(h)(2)(A). Id. at 515, N.18.

This explicit recognition of the possibility and effect of a successful attack on discriminatory state intestacy

laws was an additional and unmistakable foreshadowing of Trimble. All the illegitimacy cases, other than Labine and Mathews, cited by Trimble upheld the equal protection attack, and to that extent they clearly foreshadowed the result in Trimble as well.

Trimble cannot be held unforeseeable when it was possible that the Labine court would have struck down the Illinois statute. Labine cannot be credited with creating even a doubt that insurmountable barriers might pass constitutional muster. In any case, the rational basis test applied by Labine had clearly been abandoned before Trimble. For these dual reasons, therefore, the decision in Trimble was not a change sufficiently significant to justify denial of retroactive effect.

THE TWO COMPETING TESTS

Several approaches have been taken toward defining Trimble's retroactivity, as documented by appendix "C", infra. The Chevron test is one which has been mandated by this Court. Chevron is followed in deciding the retroactivity of state decisions because of the force of its reasoning. The test applied by the court below, on the other hand, has very little to recommend it, even though it is followed, or at least stated, in a great number of cases. Widespread use of this "date-of-claim" test has masked the important distinction between a collateral attack on a closed estate and a direct appeal involving an open estate.

Use of the Chevron test, however, makes it clear that a retroactive application of Trimble to direct appeals in open

estates preserves Equal Protection interests, while leaving untouched the state interest in an orderly probate. The use of a competing test raises a substantial question. This Court has the jurisdiction and duty to decide the extent of retroactivity of its own decisions. It should do so.

PART II.

LEGITIMATION QUESTION RESTATED

4. Does the Fourteenth Amendment require an opportunity for Delynda to legitimate herself equivalent to the statutory procedures arbitrarily denied her?

* * *

SUBSTANTIALITY OF
THE DENIAL OF LEGITIMATION

(1) The Court found a substantial issue presented in Pickett v. Brown, 103 S.Ct. 2199 (1983). The issue here is more substantial. Delynda has been afforded no chance whatever to legitimation.

(2) The decision of the Court below is in direct conflict with Pickett. It did not apply the two-part test set down in Pickett, but an irreconcilable and

inappropriate test, sustaining the statutes solely by holding them supported by a "rational state basis".

(3) The refusal by the court below to apply the Pickett test is essential to its result, since the statutory barriers it sustained must fall under Pickett.

(4) The decision below is poor precedent in upholding classifications against illegitimates based on purely fortuitous events which were unrelated to any state interest in the orderly disposition of estates.

(5) The opinion of the court below upholding the exclusion, to the extent based on death, conflicts with the decision of the Eleventh Circuit in Herron v. Schweiker, 697 F.2d 999 (Eleventh Cir. 1983).

SUMMARY OF LEGITIMATION DISCUSSION

Delynda's rights to legitimation were denied in the present case based on one or more classifications, each of which, in the posture of this case, posed an insurmountable barrier to her heirship. A statute which poses an insuperable barrier fails the first element of the test for substantial relation to an important state interest. Additionally, each of the classifications which could have been applied to deny legitimation to Delynda is not even rationally related to the state interest in order in the distribution of estates.

THE FOURTEENTH AMENDMENT REQUIRES THAT
DELYNDA RECEIVE AN OPPORTUNITY TO
LEGITIMATE HERSELF EQUIVALENT TO THAT FROM
WHICH SHE WAS EXCLUDED BY THE ARBITRARY

STATUTORY CLASSIFICATION

The Equal Protection Requirements

Two requirements of equal protection were set out by this Court in Pickett v. Brown, 103 S.Ct. 2199, 2206 (1983). A classification will be struck down if it does not provide a reasonable opportunity for those excluded to bring a suit to establish a relationship to their father. Additionally, the statute will fall unless substantially related to an important state interest.

The Statutes

The operative statutory classification appears in the 1979 amendment to §42(b) of the Texas Probate Code which, for the first time, allowed inheritance to those who had been "legitimated by a court decree as provided by Chapter 13 of the Family Code".

Chapter 13 legitimation was never available to Delynda because she was born before the 1975 effective date of the amendments to the Family Code which created the legitimation action. Wynn v. Wynn, 587 S.W.2d 790 (Tex. Civ. App. --Corpus Christi, 1979, no writ).

Delynda is statutorily excluded from the constitutionalizing 1979 amendment by §37 of the Probate Code. Section 37 has been held to apply the code sections in effect at the time of the father's death to the heirs of an estate.

The Court Below

The lower court, at p.700 of its reported opinion, disposed of this Equal Protection attack as follows:

Even if the Plaintiff could claim under Section 42(b) as amended, her exclusion from the inheritance under that statute does not deny her constitutional equal protection since

a rational state basis supports that legislation.

DISCUSSION

It was settled in Pickett v. Brown, 103 S.Ct. 2199 (1983) that a denial of rights based on the classification of illegitimacy denies equal protection if 1) no reasonable opportunity is provided for the illegitimate class to share in the rights accorded to others, or 2) the classification of illegitimacy is not substantially related to an important state interest.

Sections 37 and 42(b) of the Texas Probate Code, in conjunction with Chapter 13 of the Texas Family Code, do not satisfy the Pickett requirements.

Texas Probate Code §37 vests a decedents property rights "immediately" in his heirs at law. Case law has established that under §37, the law in effect at the

time the decedant died will normally control the devolution of his estate.

Prince Ricker died in 1976, when the inheritance rights of illegitimate children came under the 1955 version of §42 of the Probate Code. The original §42 required a marriage for the child to inherit. In 1979, in an attempt to constitutionalize §42, it was amended to allow inheritance if the child was "legitimated by a court decree as provided by Chapter 13 of the Texas Family Code."

Sections 37 and 42, as interpreted by the court below, require that Delynda's case be decided under the unconstitutional 1955 version. They therefore place an insurmountable barrier in the path of Delynda's heirship. Section 37 therefore operates to revive, at the time of trial, the unconstitutional and repealed version

of §42. It therefore fails the insurmountable barrier prong of the Pickett test. Section 37, the chronological choice-of-statute rule, is invalid because it attempts to invoke and apply by reference the unconstitutional barrier of another statute, the original enactment of §42. Looking beyond §37, Delynda is entitled to any relief which she would have been entitled to if the current §42 had been in effect when her father died.

Wynn v. Wynn, 587 S.W.2d 790 (Tex. Civ. App. --Corpus Christi, 1979, no writ) is one of the many Texas cases recognizing that those born before the effective date of the 1975 amendments were excluded from any right to bring an action under the statute.

Under Family Code §13.08, issuance of a decree of legitimation is mandatory upon

the finding of the jury that the alleged father is the father of the child. The decree, under Probate Code §42(b), entitles the child to inherit from the father.

Delynda secured a finding by the jury at trial establishing her relationship with Prince Ricker.

Delynda could not bring an action under the Family Code while her father was alive because the statutory action was not available to her. Wynn v. Wynn, 587 S.W.2d 790 (Tex. Civ. App. --Corpus Christi, 1979, no writ).

Proof of paternity during the lifetime of the parent is not required of a legitimate child. The justifiability of such a requirement, judicially engrafted into a statute which seemed neutral on the point, was rejected in Herron v. Schweiker, 697 F.2d 1001 (Eleventh Cir.

1983), applying a test very similar to that set out in Pickett. In that case, as in the case at hand, a lifetime requirement would have denied any reasonable opportunity to bring the action. The court rejected the argument that the problems of proof could form the basis for an insurmountable barrier to heirship.

PART III.

SEXUAL CLASSIFICATION QUESTION RESTATED

5. Where maternal heirship requires only a preponderance of the evidence, while paternal heirship is not allowed, is the distinction substantially related to an important state interest?

6. Was the denial of Delynda's heirship from Prince Ricker justified in

light of the jury's unchallenged finding of paternity and the convincing proof at trial?

* * *

SUBSTANTIALITY OF THE SEX-BASED EXCLUSION FROM HEIRSHIP

1. This question was previously reserved in Trimble v. Gordon, 430 U.S. 762 (1977). It is ripe for decision under the test set out in Pickett v. Brown, 103 S.Ct. 2199 (1983). The outright ban on heirship is invalid both because it is insurmountable and because it is not tuned even roughly to the presence or absence of problems of proof in any particular estate.

2. Less-onerous alternatives adequately serve the state interest in avoiding fraud or mistake in probate. Paternal heirship is allowed on proof by clear and convincing evidence under the

Uniform Probate Code. In Puerto Rico and the District of Columbia the traditional tools of the adversary system are regarded as sufficient to protect the probate process. These alternatives contrast with the untuned approach of the statute at hand.

3. Societal interests almost identical to those involved in this question have been deemed substantial in decisions of this Court. These include state interests in avoiding fraud and avoiding welfare dependency.

4. The interest of fairness to the innocent is doubly relevant where status of birth is not complicated by doubtful evidence of paternity in this particular case.

SUMMARY OF DISCUSSION

Although proof of maternity is

somewhat easier in general than proof of paternity, the difference does not justify a meat-axe exclusion of paternal heirship.

* * *

TOTAL DENIAL OF PATERNAL INHERITANCE IS NOT SUFFICIENTLY RELATED TO FAIRNESS IN PROBATE TO VALIDLY BAR DELYNDA'S CLAIM.

Maternity is frequently easier than paternity to prove. This is a fact. Although it is not the fault of the non-marital child, and it complicates her task of establishing parentage, it is one which may form the basis for somewhat different rules regarding proof of motherhood and fatherhood. The general ease of proof of maternity is consistent with the rule allowing its proof by a preponderance. The fact that the father is male, however, does not mean that proof of parentage will never be clear or certain. The denial of

paternal inheritance in every case, therefore, is overbroad. There is nothing in the inherent differences between the sexes that justifies denial of heirship when the proof is clear.

Trimble v. Gordon 430 U.S. 762, 772, partly addressed this issue in the intestacy context. The court struck down the Illinois statute for excluding certain categories of illegitimate children unnecessarily. It held that for

at least some significant categories of illegitimate children of intestate men, inheritance rights can be recognized without jeopardizing the orderly settlement of estates or the dependability of titles to property passing under the intestacy laws.

Pickett v. Brown, 103 S.Ct. 2199 (1983), states a two-part test for analysis of illegitimacy classifications. The denial of rights must fall if it does not provide a reasonable opportunity to those

in the excluded class to establish a claim based on the merits of their individual case. The Court held such an opportunity the first essential element of a substantial relation to the state interests.

Clearly the meat-axe exclusion of paternal heirship has cut through the bone rather than the fat in the case at hand. The proof that Delynda is the natural child of her father is, at a minimum, sufficiently certain that any interest of the state in avoiding fraud or mistake is absent. The jury's finding of paternity, uncontested in the state courts, should resolve the issue of Delynda's heirship.

NOTICE TO TEXAS ATTORNEY GENERAL THAT
28 U.S.C. 2403(b) MAY APPLY

As required by Rule 28.4(c), the Attorney General of the State of Texas is hereby advised that 28 U.S.C. 2403(b) may apply in this case, since the State of Texas is not a party and the appeal draws into question the constitutionality of a number of Texas statutes bearing on the inheritance rights of illegitimate children, specifically §42 of the Probate Code of 1955, §§37 and 42 of the current Probate Code, §§13.01 and 13.02 of the Family Code, and the scope of Chapter 13 of the Family Code as providing no legitimation for children born before it was adopted.

Appellant respectfully submits that
the cause presents substantial questions
which invoke the statutory jurisdiction of
this Court.

R. Stephen McNally

R. Stephen McNally
Counsel of Record for Appellant
P.O. Box 1586
Austin, Texas 78767-1586

(512) 474-1397

APPENDIX A
OPINIONS, JUDGEMENTS, ORDERS OF
COURTS BELOW

Table of Contents

Opinion of Court of Appeals of Texas, Eighth Supreme Judicial District..A.1
Judgement of the District Court of Reagan County, Texas.....A.15
Refusal of Writ of Error, no reversible error, Supreme Court of the State of Texas.....A.20
Order overruling amended motion for Rehearing in the Supreme Court of the State of Texas.....A.22
Judgement of Court of Appeals of Texas, Eighth Supreme Judicial District.....A.24
Order Overruling Amended Motion for Rehearing in Court of Appeals of Texas, Eighth Supreme Judicial District.....A.26
Notice of Appeal to the Supreme Court of the United States.....A.28
Proof of Service of Notice of Appeal to the Supreme Court of the United States.....A.30

**Delynda Ann Ricker Barker
REED, Appellant,**

v.

**Princess Ann Ricker CAMPBELL, Indi-
vidually and as Administratrix of the
Estate of Prince Ricker, deceased, Ap-
pellée.**

No. 08-83-00022-CV.

**Court of Appeals of Texas,
El Paso.**

Dec. 19, 1984.

Rehearing Denied Jan. 23, 1985.

Illegitimate daughter brought suit against administratrix to establish a share in estate of her natural father who died intestate. The 83rd District Court, Reagan County, William H. Earney, J., rendered take-nothing judgment against daughter, and she appealed. The Court of Appeals, Ward, J., held that: (1) illegitimate daughter could not inherit a share in estate of her natural father as a "recognized" illegitimate child; (2) jury's findings, leading to the conclusion that illegitimate daughter was not entitled to inherit a share in the estate of her natural father, were not erroneous as a matter of law, nor were they contrary to the great weight and preponderance of the evidence; and (3) illegiti-

mate daughter's exclusion from inheritance did not deny her constitutional equal protection.

Affirmed.

R. Stephen McNally, Austin, for appellant.

Paul McCollum, Kathleen McCulloch, Shafer, Gilliland, Davis, McCollum & Ashley, Odessa, for appellee.

Before WARD, OSBORN and SCHULTE,
JJ.

OPINION

WARD, Justice.

The Plaintiff Delynda Ann Ricker Barker Reed appeals from a take-nothing judgment rendered against her in her suit to establish a share in the estate of her natural father Prince Ricker. Prince Ricker died intestate and the Defendant Princess Ann Ricker Campbell, a legitimate child, was appointed administratrix of the estate. Trial was to a jury which found that the Plaintiff was Prince's child but that her mother was never validly married to Prince. We will affirm the judgment of the trial court.

Prince Ricker and Alice Rosemary Lawson married in 1954. Two daughters were born of this marriage, Princess Ann and Rosemary Jane. Alice Rosemary left Prince Ricker in September, 1957. The Plaintiff's mother, Annabel Boutwell, claimed that she and Prince Ricker were ceremonially married in Juarez, Mexico, on November 24 or 27, 1957, but it was not until February 28, 1958, that a divorce dissolved Ricker's first marriage to Alice Rosemary. Four days before the Plaintiff's birth, Annabel Boutwell changed her last name to Ricker. The Plaintiff was born on November 1, 1958, and her mother then married Jerry Barker in February, 1959. He later adopted the Plaintiff. On October 20, 1958, Prince Ricker married Jeri Laverne, which marriage was dissolved by divorce in January, 1960. In April, 1960, Prince Ricker married Marilyn Watts and their marriage lasted until 1967. Three children were born of this marriage, they being Prince Jr., Brett and Mark.

Prince Ricker was a chronic alcoholic with associated mental problems and was judicially declared non compos mentis in July, 1968. He died intestate on December 22, 1976, and the Defendant was appointed administratrix of his estate.

The Plaintiff filed her application to determine heirship in February, 1979. The Plaintiff contended that she was the legitimate child of Prince Ricker and was entitled to inherit from his estate. She alleged that upon the removal of the preexisting impediment to the marriage of Prince Ricker and her mother, which was his divorce in February, 1958, from Alice Rosemary, the relationship between Prince and the Plaintiff's mother became a putative or common-law marriage.

The Defendant contends that any relationship between the Plaintiff's mother and Prince was merely meretricious, being no marriage at all, and any relationship they may have had did not ripen into a putative or common-law relationship when Prince Ricker and Alice Rosemary Lawson divorced. The Defendant and the four other children of Ricker's valid marriages claimed to be Ricker's only heirs at law.

By their answers to the Special Issues submitted, the jury determined:

1. The Plaintiff was a child of Prince Ricker.
2. Ricker and Boutwell did enter into a ceremonial marriage on November 24 or 27, 1957.

3. On November 24 or 27, 1957, Ricker and Boutwell did agree to be husband and wife.
4. The jury failed to find that Boutwell and Ricker did live together as husband and wife on or after the 24th or 27th of November, 1957 until June, 1958.
5. The jury failed to find that Boutwell and Ricker did hold themselves out to the public as husband and wife until June, 1958.
6. This issue asked if on November 24 or 27, 1957, Boutwell believed Ricker to be unmarried, and the jury answered "She Believed He Was Married."

As previously stated, the trial court received the jury's verdict and based thereon entered a take-nothing judgment against the Plaintiff.

Recent developments in the inheritance rights of illegitimate children have been well documented in cases pertinent to this appeal such as *Batchelor v. Batchelor*, 634 S.W.2d 71 (Tex.App.—Fort Worth 1982, writ ref'd n.r.e.); *Johnson v. Mariscal*, 620 S.W.2d 905 (Tex.Civ.App.—Corpus Christi 1981), *writ ref'd n.r.e.*, 626 S.W.2d 737,

(Tex.1982), *cert denied*, 458 U.S. 1112, 73 L.Ed.2d 1375, 102 S.Ct. 3496 (1982); *Winn v. Lackey*, 618 S.W.2d 910 (Tex.Civ.App.—Eastland 1981, no writ) and *Bell v. Hinkle*, 607 S.W.2d 936 (Tex.Civ.App.—Houston [14th Dist.] 1980), *cert denied*, 454 U.S. 826, 70 L.Ed.2d 100, 102 S.Ct. 115 (1981). In 1955, and again in 1977, the Texas Legislature provided that while illegitimate children could inherit from their mothers under the laws of descent and distribution, they had no right to inherit from their father. That situation changed, however, with the passage by the Legislature in 1979 of Section 42(b) of the Texas Probate Code, effective August 27, 1979. An illegitimate child can now inherit from his father under three circumstances:

1. If he is born or conceived before or during the marriage of his father and mother;
2. If he is legitimized by court decree as provided in Chapter 13 of the Family Code; or
3. If the father has executed a statement of paternity as provided in Section 13.22 of the Family Code or a like statement properly executed in another jurisdiction.

Chapter 13 of the Family Code provides

for a regular procedure through which a child may obtain a decree designating the alleged father as the father of the child in order to create a parent-child relationship. This may be an involuntary procedure pursuant to Sections 13.01 through 13.09, or it may be a voluntary legitimation pursuant to Section 13.21. If neither of these procedures is followed, a child may still be legitimated for the purposes of inheritance if the father has executed a written statement of paternity pursuant to Section 13.22 of the Family Code.

[1] The Plaintiff's first point argues that the Plaintiff was entitled to inherit from her father since the evidence conclusively established as a matter of law that the father recognized her as his child. To the extent that this point presents the argument that the evidence conclusively established that the father recognized the Plaintiff as his child, it will be overruled since the evidence was hotly contested on this issue. The instances of recognition by the father of the child are opposed in the main by the strong evidence of the deteriorated mental condition of the father during each occurrence as well as positive occurrences of nonrecognition. Considering only the evidence and the inferences arising therefrom that support the implied

finding of the court on nonrecognition, the argument is overruled.

[2] Since the evidence on recognition was disputed, the argument fails for the additional reason that the Plaintiff secured no finding on recognition. The issue was not requested. The matter has been waived. Rule 279, Tex.R.Civ.P.

[3] Finally and regardless of the above, the Plaintiff still would not inherit as a "recognized" illegitimate child since Section 42(b) of the Probate Code provides the only methods by which an illegitimate child may inherit from her father. Being a "recognized" illegitimate is not one of them. *Bell v. Hinkle, supra; Bachelor v. Bachelor, supra; Mills v. Edwards, 665 S.W.2d 153 (Tex.App.—Houston [1st Dist.] 1984, no writ).* *Johnson v. Meriscal, supra,* held to the contrary, but the Supreme Court at 626 S.W.2d 737, expressed no opinion on that ruling and refused both applications for writ of error.

Mills v. Edwards, supra, is the last case to have passed on the "recognition" ground and it too held that Section 42(b) provides the only methods by which an illegitimate child may inherit from her father. Being a "recognized" illegitimate is not one of them. The first point is overruled.

[4] The second point advances the same complaint as the first point except that it is in terms of great weight and preponderance of the evidence terminology. The point is overruled.

[5] The third point is that the Plaintiff is entitled to inherit since to provide otherwise would be unconstitutional under the Equal Protection clauses of the State and Federal Constitutions. Under the rule of *Winn v. Lackey, supra*, and the out-of-state cases cited therein, the equal protection argument fails as *Trimble v. Gordon*, 430 U.S. 762, 52 L.Ed.2d 31, 97 S.Ct. 1459 (1977), has not been applied retroactively where the father died before the case came down and suit was filed afterwards. Even if the Plaintiff could claim under Section 42(b) as amended, her exclusion from the inheritance under that statute does not deny her constitutional equal protection since a rational state basis supports that legislation. *Davis v. Jones*, 626 S.W.2d 303 (Tex.1982); *Mills v. Edwards, supra*. The point is overruled.

[6] A series of as a matter of law and great weight and preponderance of the evidence points attack the jury findings to Special Issue Nos. Four, Five and Six. In

reviewing the record on the "as a matter of law" points, this Court must consider only the evidence and reasonable inferences arising therefrom which support the jury findings and must disregard all the evidence and inferences to the contrary. *Estate of Claveria v. Claveria*, 615 S.W.2d 164 (Tex.1981).

In regard to the claim of a good faith marriage by Annabel Boutwell, she admitted that as late as the summer of 1957, she knew of the common knowledge in the community where she lived that Prince Ricker was still married to Rosemary Lawson and as late as October, 1957, she did not know whether or not his divorce was final. She took no action to find out although the courthouse where the divorce had been filed was only two blocks from where she lived.

Annabel Boutwell testifies she and Ricker were ceremoniously married in Juarez, but she did not know any of the witnesses present and claims she lost the marriage certificate evidencing the alleged marriage. Defendant's Exhibit No. 31, consisting of two certificates of non-existence of records from Mexico, showed that the civil registries showed no marriage of Prince Ricker

and Annabel Boutwell from January, 1957, to December, 1959, in the Mexican registries. Further, witness Trejo, an attorney from Juarez, Mexico, testified that Mexican law requires all marriage ceremonies to be performed by the civil registry judge and that all such ceremonies be recorded in the civil registry of the district. Further, Annabel Boutwell testified that from the time of the purported marriage until she and Prince Ricker ended their relationship in June, 1958, she continued to live with her mother in Big Springs and Ricker kept his residence in Stanton, Texas, where he was teaching school.

No documentary evidence was introduced to substantiate the claims that they held themselves out to the public as husband and wife, although Annabel testified that they made several trips to Austin, San Antonio, San Angelo and Midland and registered at the hotels as Mr. and Mrs. Prince Ricker. She admitted that she never filed a petition for divorce from him, and a teaching associate of Ricker's testified that a search of the school records did not reflect whether Ricker was or was not married. He testified that he was under the impression that Ricker was single because he never mentioned a family. Annabel

Boutwell never filed suit for child support nor did she ever attempt to establish the paternity of Prince Ricker during his lifetime.

Ricker told his last wife Marilyn Watts in the presence of his father that he never married Annabel Boutwell.

[7] Thelma Barham, the mother of Rosemary Lawson Ricker, testified that she lived in Big Springs where Annabel Boutwell lived and she had at no time heard of any claim made by Annabel Boutwell that she was the wife of Prince Ricker. The "as a matter of law" points are overruled.

In reviewing the great weight and preponderance of the evidence points, we have considered all of the evidence. While the Plaintiff introduced evidence sufficient to support her contentions in regard to the challenged jury findings, we are of the opinion that the great weight and preponderance of the evidence points should likewise be overruled.

Based on the above, we therefore overrule Points of Error Nos. Four, Five, Seven, Eight, Nine, Ten, Eleven, Twelve and Thirteen.

[8] The final point to be considered is Point of Error No. Six which complains of the action of the trial court in excluding certain testimony offered by Annabel Boutwell that she had been told by Prince Ricker and by his first wife Alice Rosemary Lawson that Ricker was single at the time of the Juarez marriage. At the time that the offer was made as to a statement made by Alice Rosemary Lawson, the trial court first sustained the Defendant's objection and then overruled the Defendant's objection, and no further testimony was offered by the Plaintiff as to what the first wife had told her. At a later point, Annabel Boutwell began to testify as to what Ricker may have told her about his marriage status and the trial court then sustained the Defendant's objections stating that he had previously sustained the Defendant's objection as to what the first wife had told her and that he would sustain the Defendant's same objection as to what Ricker told her of his marriage relationship. Regardless of this testimonial confusion regarding the two offers of testimony, no bill of exceptions on the excluded testimony was tendered by the Plaintiff on what either of the two people told Annabel Boutwell. The

Plaintiff has failed to preserve any error.
The point is overruled.

We have examined all of the Plaintiff's
points and they are all overruled. The
judgment of the trial court is affirmed.

NO. 2567

JUDGMENT

ON THE 13th day of September,
1982, came on to be heard and considered
by the Court the above entitled and num-
bered cause, and came the Plaintiff in
person and by her Attorney, and came the
Defendant in person and by its Attorney,

and all parties announced ready for trial, whereupon a Jury of twelve good and lawful jurors was selected and said Jury having been duly empaneled and sworn, the case proceeded to trial and the Jury heard the evidence. The Charge of the Court and the argument of counsel and said case was then submitted to the Jury upon the Special Issues contained in the Court's Charge, to which reference is here made for ail purposes; whereupon, the Jury retired on the 17th day of September, 1982, to consider its verdict and to make its findings of fact upon the Special Issues, Definitions and Explanatory Instructions submitted to the Jury by the Court and the Court's Charge and afterwards, to-wit:

On the 17th day of September, 1982, the Jury returned into Open Court

A.17

its verdict consisting of the following
Answers to the Special Issues submitted
to it:

SPECIAL ISSUE NO. 1

"Yes"

SPECIAL ISSUE NO. 2

"Yes"

SPECIAL ISSUE NO. 3

"Yes"

SPECIAL ISSUE NO. 4

"No"

SPECIAL ISSUE NO. 5

"No"

SPECIAL ISSUE NO. 6

"She believed he was married"

The findings and verdict of the
Jury were received by the Court without
objection from any of the parties and
were filed and entered of record in the
Minutes of the Court, and the Jury was

discharged.

WHEREUPON, the Defendant having made, and the Court having duly considered, the Motion for Judgment, the Court is of the opinion that judgment should be entered for the Defendant.

IT IS, THEREFORE, ORDERED,
ADJUDGED AND DECREED by the Court that Plaintiff take nothing by her suit and that the Defendant be discharged and dismissed with its costs.

All relief not granted herein,
is hereby denied.

SIGNED this 1st day of

November, 1982.

HONORABLE WILLIAM H. EARNEY,
JUDGE PRESIDING

A.19

FILE: November 1, 1982

Hazel Carr

District Clerk, Reagan Co., Texas

A.20

SUPREME COURT OF TEXAS

P.O. Box 12248

Supreme Court Building

Austin, Texas 78711

Mary M. Wakefield, Clerk

June 5, 1985

Mr. R. Stephen McNally

P.O. Box 1586

Austin, TX 78767

Mr. Paul McCollum

Shafer, Gilliland, Davis,

McCollum & Ashley

P.O. Drawer 1552

Odessa, TX 79760

RE: Case No. C-3851

STYLE: DELYNDA ANN RICKER BARKER REED

v. PRINCESS ANN RICKER CAMPBELL

ET AL

A.21

Dear Counsel:

Today, the Supreme Court of Texas refused the above referenced application for writ of error with the notation, No Reversible Error.

Respectfully yours,

Mary M. Wakefield, Clerk

By _____
Deputy

A.22

SUPREME COURT OF TEXAS

P.O. Box 12248

Supreme Court Building

Austin, Texas 78711

Mary M. Wakefield, Clerk

June 5, 1985

Mr. R. Stephen McNally

P.O. Box 1586

Austin, TX 78767

Mr. Paul McCollum

Shafer, Gilliland, Davis,

McCollum & Ashley

P.O. Drawer 1552

Odessa, TX 79760

RE: Case No. C-3851

STYLE: DELYNDA ANN RICKER BARKER REED

v. PRINCESS ANN RICKER CAMPBELL

ET AL

Dear Counsel:

Today, the Supreme Court of Texas granted petitioner's motion to amend motion for rehearing of the application for writ of error in the above styled case. It is further ordered that the amended motion for rehearing is overruled.

Respectfully yours,

Mary M. Wakefield, Clerk

By _____
Deputy

COURT OF APPEALS
EIGHTH SUPREME JUDICIAL DISTRICT
EL PASO, TEXAS

DELYNDA ANN	\$
RICKER BARKER	\$
REED,	\$
Appellant,	\$
VS.	No. 08-83-00022-CV
PRINCESS ANN	\$ Appeal from 83rd
RICKER CAMPBELL,	\$
INDIVIDUALLY AND	\$ District Court of
AS ADMINISTRA-	\$
TRIX OF THE	\$ Reagan County,
ESTATE OF	\$
PRINCE RICKER,	\$ Texas. (TC# 2567)
DECEASED	\$
Appellee.	\$

JUDGMENT

This cause came on to be heard

on the transcript of the record of the court below, and the same being considered, because it is the opinion of this Court that there was no error in the judgment, it is ordered, adjudged and decreed by the Court that the judgment be in all things affirmed, and that the appellee do have and recover of and from the appellant and her sureties all costs in this behalf expended, and that this decision be certified below for observance.

December 19, 1984

Before Panel No. 1

Ward, Osborn and Schulte, JJ.

Court of Appeals
Eighth Supreme Judicial District
of Texas
El Paso City-County Building
El Paso, Texas 79901-2490
Martha (Fran) S. Diaz, Clerk
(915) 546-2240

January 23, 1985

R. Stephen McNally
712-A East 26th Street
Austin, TX 78705

Paul McCollum
Shafer, Gilliland, Davis,
McCollum & Ashley
P.O. Drawer 1552
Odessa, TX 79760

Kathleen M. McCulloch
Shafer, Gilliland, Davis,
McCollum & Ashley
P.O. Drawer 1552
Odessa, TX 79760

RE: Case No. 08-83-00022-CV
STYLE: REED, DELYNDA ANN RICKER BARKER
V: CAMPBELL, PRINCESS ANN RICKER

The Honorable Court of Appeals
today rendered its order overruling
Appellant's motion and amended motion for
rehearing.

(NO OPINION)

Respectfully yours,
Martha (Fran) S. Diaz, Clerk

IN THE COURT OF APPEALS OF THE STATE
OF TEXAS, EL PASO, EIGHTH SUPREME
JUDICIAL DISTRICT

Delynda Ann Ricker

Barker REED,

Appellant,

VS

No. 08-83-00022-CV

Princess Ann Ricker

CAMPBELL, Individually

and as Administratrix

of the Estate of

Prince Ricker, deceased, Appellee.

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Delynda Ann Ricker Barker Reed, the appellant above named, hereby appeals to the Supreme Court of the United States from the judgement of the Court of Appeals of Texas, El Paso, affirming the judgement

of the trial court, entered in this case on December 19, 1984. State appeals of said judgment were exhausted on July 17, 1985, when the Texas Supreme Court refused rehearing.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

R. Stephen McNally

Attorney for Delynda Ann Ricker

Barker Reed, Appellant

P.O. Box 1586

Austin, Texas 78767

(512) 474-1397

Filed in Court of Appeals

Sep 30, 1985

Martha S. Diaz

Clerk, Eighth District

No. 08-83-00022-CV

Delynda Ann Ricker Barker

REED, Appellant,

VS.

Princess Ann Ricker CAMPBELL,

Individually and as Administratrix

of the Estate of Prince Ricker,

deceased, Appellee.

PROOF OF SERVICE

I, R. Stephen McNally, counsel of record for Delynda Ann Ricker Barker Reed, and a member of the Bar of the Supreme Court of the United States, hereby swear and certify that, on the 27th day of September 1985, which date was within the time permitted for filing and service, I served three copies of the enclosed notice of appeal to the Supreme

Court of the United States on each of the several parties thereto, as listed below:

1. On Princess Ann Ricker Campbell, individually and as Administratrix of the Estate of Prince Ricker, deceased, by mailing three copies in duly addressed envelopes, with first class postage prepaid, Return Receipt Requested, registered mail No. R-285-727-471 to her counsel of record in both capacities, as follows:

Paul McCullum and Kathleen M.

McCulloch, Attorneys for Princess

Ann Ricker Campbell; Shafer,

Gilliland, Davis, McCullum and

Ashley, P.O. Drawer 1552, Odessa,

Texas 79760.

It is further certified that all parties required to be served have been served, and that the list of such parties

is as set forth above.

R. Stephen McNally

Attorney for Appellant/Petitioner.

Delynda Ann Ricker Barker Reed.

P.O. Box 1586,

Austin, Texas 78767

(512) 474-1397

Filed in Court of Appeals

Sep. 30, 1985

Martha S. Diaz

Clerk, Eighth District

**APPENDIX B
CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED**

Table of Contents

Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.....	B.1
Texas Probate Code §37.....	B.1
Texas Probate Code §42	
As Enacted in 1955.....	B.2
As Amended in 1977.....	B.3
As Amended in 1979.....	B.4
Texas Family Code §13.01	
As Enacted in 1975.....	B.5
As Amended in 1981.....	B.6
As Amended in 1983.....	B.6
Texas Family Code §13.02.....	B.7

INDEX TO APPENDIX A

CHRONOLOGY OF EVENTS ----- A-i

APPENDIX A
CHRONOLOGY OF EVENTS

1. Sept. 27, 1954

Prince Ricker & Alice Rosemary Lawson are married, two children are born being:

- (1) Princess Ann
- (2) Rosemary Jane

2. Nov. 24 or 27, 1957

Claimed Mexican marriage of Prince Ricker & Annabel Boutwell.

3. Feb. 28, 1958

Divorce - Prince Ricker & Alice Rosemary Lawson.

4. June or Aug., 1958

Claimed end of relationship between Prince Ricker and Annabel Boutwell.

5. Oct. 20, 1958

Marriage of Prince Ricker and Jeri Laverne.

6. Oct. 27, 1958

Annabel Boutwell changes her name to "Ricker".

7. Nov. 1, 1958

Appellant is born.

8. Feb. 24, 1959

Marriage of Annabel Boutwell & Jerry Oran Barker.

9. Jan. 4, 1960

Divorce - Prince Ricker & Jeri Laverne.

10. April 8, 1960

Marriage of Prince Ricker and Marilyn Watts, three children are born being:

- (1) Prince, Jr.
- (2) Brett
- (3) Mark

11. Oct. 21, 1966

Appellant adopted by Jerry Oran Barker.

12. March 8, 1967

Divorce - Prince Ricker & Marilyn Watts.

13. Dec. 22, 1976

Prince Ricker dies intestate.

14. Jan. 3, 1977

Letters of Administration granted to Appellee.

15. April 26, 1977

Trimble v. Gordon decided.

16. Feb. 16, 1978

Appellant files Notice of Heirship and claim for \$21,600.00 for past child support.

17. June 15, 1978

Appellant filed independent suit in the 183rd Judicial District Court of Reagan County, Texas for child support.

18. Feb. 27, 1979

Appellant filed in the probate proceedings an Application to Determine Heirship claiming she was a legitimate child and entitled to one-sixth (1/6) of the estate.

19. April 20, 1981

All actions consolidated and transferred to the 183rd Judicial District Court.

20. Sept. 13, 1982

Appellant non-suits her claim for child support.

21. Sept. 14, 1982

Trial commences.